

1 BENJAMIN HAKIM
2 IN PROPIA PERSONA
3 11740 Wilshire Boulevard
4 Los Angeles, California 90025
5 Ben.Hakim@Gmail.com
6 805 570 1717

✓
RECEIVED
U.S. DISTRICT COURT
DISTRICT OF NEVADA
2014 DEC 16 P 1:04
U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY _____ DEPUTY

11 UNITED STATES DISTRICT COURT
12 NEVADA DISTRICT
13 LAS VEGAS

13 HAKKASAN LV, LLC et al.

14 Plaintiff,

15 vs.

16 BEN HAKIM, et al.

17 Defendants.

) Case No.: 2:13-cv-1544-KJD-PAL

)

) [PROPOSED] NOTICE OF MOTION AND
) MOTION FOR RELIEF AND SET ASIDE OF
) DEFAULT AND DEFAULT JUDGMENT;
) MEMORANDUM OF POINTS IN
) AUTHORITIES IN SUPPORT;
) DECLARATION OF BENJAMIN HAKIM IN
) SUPPORT

)

) Date:

) Time:

) Department:

) 333 S. Las Vegas Boulevard, Las Vegas, NV 89101

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

2 **TAKE NOTICE**, Defendant BENJAMIN HAKIM ("HAKIM") will bring the attached
3 motion on for hearing before this court on _____(date), at
4 _____ [time] or as soon thereafter as the matter can be heard, in Courtroom No.
5 _____ of the United States Courthouse located at 333 S. Las Vegas Boulevard, Las
6 Vegas, NV 89101 to set aside the default and default judgment because HAKIM was not properly
7 served with process as ordered by the Court, all of which appears in the attached declaration of
8 Defendant HAKIM and from the certificate of service on the summons and complaint and the
9 TRO of 08/30/2014.

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11

12 Dated: 16 December 2014

By: /S/ BENJAMIN HAKIM
BENJAMIN HAKIM
Defendant In Propria Persona

13

14

15 **MOTION FOR RELIEF FROM JUDGMENT OR SET ASIDE OR BOTH**

16 Defendant HAKIM moves this court per Rule 55 or in the alternative Rule 60 for an order
17 of relief and set aside of the default and default judgment entered in this action on 07/10/2014 and
18 leave to file the proposed motion to quash service of summons and complaint. A proposed copy
19 filed herein.

20 The grounds are as follows:

- 21 1. Despite the technical correctness of service Defendant did not receive actual notice of
22 the summons and complaint as required under Rules 4 and 5 under the TRO signed by
23 the Court on 08/30/2014.
- 24 2. Good cause, within the meaning of Rule 55 and 60 of the Federal Rules of Civil
25 Procedure as shown in the Memorandum of Points and Authorities, and Supporting
26 Declaration of Defendant HAKIM and has valid defenses, if need be asserted.
- 27 3. This motion is timely, and Plaintiff will not be unduly prejudiced if the court sets aside
28 the default and default judgment.

1 This motion is based on this document, the notice, the online docket in ECF/PACER, the
2 declaration of defendant, the supporting memorandum of points and authorities, the proposed
3 motion to quash, all of the pleadings, papers, and other records on file in this action and whatever
4 argument and evidence may be heard at the any hearing on this motion.

5
6
7 Dated: 16 December 2014

By: /S/ BENJAMIN HAKIM
BENJAMIN HAKIM
Defendant In Propria Persona

POINTS AND AUTHORITIES

I. Introduction

This case stems from an underlying and purported unauthorized use of Plaintiff's trademark or in the alternative various causes of action related to riding off the name of Plaintiff's intellectual property. In accordance with Rules 55 and 60, Defendant HAKIM moves to set aside the order granting default judgment, and permanent injunction and issue of damages. The Court should set aside the judgment and orders for several and independent reasons.

First and foremost, those judgments are void as matters of law pursuant to Rule 60. The court lacked personal jurisdiction over HAKIM, thereby rendering those judgments void. Second, those judgments and orders are void because HAKIM was never served with process complaint with Rules 4 and 5. HAKIM is a citizen of California and resident of Los Angeles Co.

Third, HAKIM was not actually in default at the time Attorney Nancy Ayala improperly informed the clerk that there was a default and requested default. Finally, even if the default were proper, there is good cause for setting aside because it was the result of excusable mistake in that HAKIM lacked actual notice and has a valid defense to the causes of action asserted against him. Thus, any refusal to set aside the defense would work an injustice.

II. Background To Case

On or about 08/27/2013 Plaintiff filed the instant action making various allegations and causes of action related to infringement and misappropriation of its intellectual property. On the same date Plaintiff's filed for TRO and preliminary injunction. (See Docket Entries #1- #9) Purported notice was only given by email (See Docket Entry 10). The court set the matter for hearing on 09/17/2014, a subsequent order permitted service by email as to the Preliminary Injunction but further required compliance *in addition* to Rules 4 and 5 of the Fed. R. Civ. Pro. as it related to the service of Summons and Complaint.¹ Default and default judgment subsequently ensued. See Docket Entry # 16.

¹ See Docket Entry 9, Page 4, No. 3 Lines 11-15 "In addition, to ensure Defendant receives timely notice of the hearing, given that Defendant must maintain accurate contact information with the domain name registrar, Plaintiffs **may, in addition to the requirements set forth in Rules 4 and**

Service never effectuated in compliance of Rules 4 and 5 which requires personal or other substituted service or a motion allowing alternative service that was not presented. Consequently, this court's jurisdiction over the Defendant is in question. Plaintiff has scheduled a judgment debtor's exam which Defendant feels he ought not to participate since being denied the opportunity to defend this case. There is no proof of personal service (See Docket Entry #8 and Declaration of Plaintiff Attorney Docket Entry #16-1 Declaration of Attorney Ayala page 1 and 2 para 4). Contrary to the Court's order Attorney Ayala did not comply with the terms of the order that was issued by the Court on 08/30/2013. (cf. Docket Entry Re TRO #9, Item No. 3 in order Pg. 4) See Docket Entries # 8, 9, 10, 16, 16-1

III. Argument

A. Rule 60 Renders the Judgment Void.

1. Purpose of Rule 60

Rule 60(b), Fed. R. Civ. Pro., allows a district court to grant a motion for relief from a final judgment or order or proceeding, including default judgments for judgments or damages for certain reasons enumerated in the Rule. Properly applied, Rule 60(b) strikes a balance between serving the ends of justice and preserving the finality of judgments. *House v. Secrema of Health and Human Services*, 668 F.2d 7, 9 (2d Cir. 1982); *Seven Elves. Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir.1981) although final judgments should not be lightly reopened, Rule 60(b) should be broadly construed to do "substantial justice." *Seven Elves*, 635 F.2d at 401. "Given the longstanding goal of allowing parties to prosecute the merits of contested lawsuits, courts grant relief from default judgments liberally." *MCI Telecommunications Com. v. The Travel Specialist*, 1991 U.S. Dist.LEXIS 12878, 2 (D.D.C.S ept.1 7, 1991); *Jackson v. Beech*, 635 F.2d 31, 835 (1980).

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5 of the Federal Rules of Civil Procedure, serve the Motion, this Order and all other pleadings filed to date on Defendant by electronic mail transmission."

2. The Judgment Is Void

Under Rule 60(b) (4) relief from a judgment or order must be granted where the judgment or order is void. A judgment or order may be void where the court lacked jurisdiction over the subject matter, lacked personal jurisdiction over the parties, acted in some matter inconsistent with constitutional due process or otherwise acted beyond the powers granted to it under the law. *Gardner v. United States*, 1999 U.S. Dist. LEXIS 2192, *5-6 (D.D.C. 1999); *Hoult v. Hoult*, 57 F.3d 1,6 (1st Cir. 1995). Unlike under Rule 60(b)(1), (2) and (3), there is no question of discretion on the part of the Court when a motion is made under Rule 60 (b)(4). *Combs v. Garin Trucking*, 825 F.2d 437,441 (D.C. Cir. 1987). If the judgment is void as a matter of law, then relief from the judgment is mandatory. Void judgments are "legal nullities" and the court's refusal to vacate such judgments is a per se abuse of discretion. See *Robinson Eng'g Co. Pension Plan + Trust v. George* 223 F.3d. 445 (7th Cir. 2000)(if underlying judgment is void, trial court abuses discretion to deny motion to vacate) *Carter v. Fenner* 136 1000 (5th Cir. 1998) cert denied. 525 US 1041 (1998) (where judgment is attached as void, district judge has no discretion, if judgment void, it must be vacated).

Moreover, unlike setting aside a default judgment under Rule 60 (b)(1), (2) or (3) where the defaulting party needs to establish the absence of willfulness on its part, the absence of prejudice to the plaintiff, and a meritorious defense, "a party attacking a judgment as void need show no meritorious claim or defense or other equities on his behalf; he is entitled to have the judgment treated for what it is, a legal nullity ." *Id.* at 441-442.

Finally, the one year statute of limitations applicable to Rule 60(b)(1), (2) and (3) motions is expressly inapplicable to Rule 60(b)(4) motions. There is no time limit on an attack on a judgment as void. *Austin v. Smith*, 312 F.2d 337, 343 (D.C. Cir. 1962); *Hertz v. Alamo Rent-A-Car Inc.*, 16 F.3d 126, 1130(1st Cir.1994). Moreover, a void judgment cannot acquire validity because of laches on the part of the party who applies for relief from it. *Austin*, 312 F.2d at 343. Although relief under Rule 60(b)(4) is not available merely because a disposition is erroneous a judgment may be deemed void within the meaning of the rule determined at the rendering, the court was powerless to enter it: *Combs*, *supra*, 825 F.2d at 442 (citations omitted). An in

1 personam judgment entered without personal jurisdiction over a defendant is void as to that
 2 defendant. Id. A judgment entered when the court has no subject matter jurisdiction over the
 3 claims is equally void.

4 As shown below, the default judgment entered against HAKIM and the orders and
 5 judgments on damages are void as a matter of law. The Court lacked personal jurisdiction over
 6 HAKIM because he lacked minimum contacts with the State of Nevada. As a second ground, the
 7 orders and judgments are void because service of process upon HAKIM was deficient.

8 **3. Hakim Does Not Have The Minimal Contacts With Nevada**

9 Nevada's long-arm statute permits personal jurisdiction over a nonresident defendant
 10 unless the exercise of jurisdiction would violate due process. NRS 14.065(1). "Due process
 11 requires 'minimum contacts' between the defendant and the forum state 'such that the maintenance
 12 of the suit does not offend traditional notions of fair play and substantial justice.'" Trump v.
 13 District Court 109 Nev. at 698, 857 P. 2d at 747 (quoting Mizner v. Mizner, 84 Nev. 268, 270, 439
 14 P.2d 679, 680 (1968)). "[T]he defendant's conduct and connection with the forum State [must be]
 15 such that he should reasonably anticipate being hauled into court there." World-Wide
 16 Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). A court may exercise specific personal
 17 jurisdiction over a defendant only when "the cause of action arises from the defendant's contacts
 18 with the forum." Trump, 109 Nev. at 699, 857 P2d at 748. Specific personal jurisdiction is
 19 appropriate when the defendant has "purposefully established minimum contacts" such that
 20 jurisdiction would "comport with 'fair play and substantial justice.'" Burger King Corp, v.
 21 Rudzewicz, 47 U.S. 462, 476 (1985) (quoting Internat. Shoe Co. v. Washinetop, S26 U.S.310,320
 22 (1945)).

23 To exercise specific personal jurisdiction over a nonresident defendant, [t]he defendant
 24 must purposefully avail himself of the privilege of acting in the forum state or of causing
 25 important consequences in that state. The cause of action must arise from the consequences in the
 26 forum state of the defendant's activities, and those activities, or the consequences thereof, must
 27 have a substantial enough connection with the forum state to make the exercise of jurisdiction
 28 over the defendant reasonable.

1 Jarstad v. National Farmers Union, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976). Questions
 2 involving personal jurisdiction mandate an inquiry into whether it is "reasonable . . . to require
 3 [the defendant] to defend the particular suit [in the jurisdiction where it is brought." Trump, 109
 4 Nev. at 7t, 857 P.2d at 749 (first and second alterations in original) (quoting World-Wide
 5 Volkswagen Corp., 444 U.S. at 292). Factors to consider in determining whether assuming
 6 personal jurisdiction is reasonable include: (1) "the burden on the defendant" of defending an
 7 action in the foreign forum, (2) "the forum state's interest in adjudicating the dispute," (3) "the
 8 plaintiffs interest in obtaining convenient and effective relief," (4) "the interstate judicial system's
 9 interest in obtaining the most efficient resolution of controversies," and (5) the "shared interest of
 10 the several States in furthering fundamental substantive social policies." Emeterio v. Clint Hurt
 11 and Assocs., 1031, 1036-37, 967 P.2d 432, 436 (1998) (quoting World-Wide
 12 Volkswagen Corp., 444 U.S. at 292).

13 Consequently This Court never had personal jurisdiction over HAKIM Therefore, any
 14 judgment involving him is void as a matter of law. Transaero. Inc. v. La Fuerza Aerea Boliviana,
 15 30 F.3d 148, 154 (D.C. Cir. 1994); Combs. supra. 825 F.2d at 442. To establish personal
 16 jurisdiction over a non-resident, such as HAKIM a court must engage in a two-part inquiry: First,
 17 a court must examine whether jurisdiction occurs under the applicable state's long-arm statute and
 18 second, then determine whether a finding of jurisdiction satisfies the constitutional requirements of
 19 due process. GTE New Media Services Inc. v. Bellsouth Communications 199 F.3d 1343, 1347
 20 (D.C. Cir. 2000); United States of America v. Ferrara, 54 F.3d 825, 828 (D.C. Cir. 1995). As
 21 there is no applicable federal long-arm statute, jurisdiction over HAKIM must be determined by
 22 reference to Nevada Law. As stated in HAKIM's declaration, he does not meet the minimum
 23 contact thresholds as he is a Citizen of California and resident of Los Angeles County. He has
 24 never transacted business nor held himself out in the Nevada's stream of commerce. As such, he
 25 cannot be adjudged in Nevada. See Hakim Declaration.

26 **B. There is Good Cause To Set Default Aside**

27 Even if the default in this case were for some reason valid there would be cause to set it
 28 aside for lack of actual notices. The facts stated show that only electronic service effectuated as it

1 related to setting a hearing for preliminary injunction. No actual service of physical documents
 2 were sent or effectuated. The lack of a motion under Rule 4 for alternative means of service also
 3 supports the notion that no actual effective service of process effectuated onto Defendant HAKIM

4 At the very least constitute mistake, inadvertence, surprise or excusable neglect sufficient
 5 to set aside a default and default judgment under Rule 60. The authorities universally agree that
 6 “good cause” standard for setting aside a mere default is much less than that. See Rule 55 (c)
 7 Berthelsen v. Kane 907 F.2d 883 885 (7th Cir. 1990) – court of appeals criticized judge who
 8 canceled status conference at which defaulting party the opportunity to seek relief under more
 9 lenient standard applicable to mere defaults) In determining good cause has been shown, a court
 10 should resolve all doubt in favor of defaulting party. See Pinto v. Electrical Insulation Suppliers,
 11 Inc. 180 FRD 200, 201- 202 (DPR 1998) See Docket Entries # 8, 9, 10, 16, 16-1 as HAKIM
 12 lacked actual notice.

13 C. No Meritorious Defense Required

14 The existence of a meritorious defense to a claim is a usual prerequisite to relief from -
 15 default. Sony Corp. v. Elm State Elec. Inc. 800 F.2d 31 (2d. Cir. 1986) However, in this case a
 16 showing of a meritorious defense should not even be required. HAKIM did not get proper notice
 17 and service of the action. HAKIM was served, according to the Docket, by email with regard to
 18 the TRO and Preliminary Injunction Hearing. Had he received actual physical documents by
 19 personal or other substituted service like US Mail no formal default would have procured. When
 20 there has not been proper notice of a lawsuit, as in this case, due process consideration mandate
 21 that the default be set aside,- even without the should of a meritorious defense. Peralta v. Heights
 22 Med. Ctr. 485 US 80, 85-87

23 1. Regardless of Defense The Court Lacks Personal Jurisdiction

24 As indicated above, this judgment is a nullity. Any judgment rendered without persona
 25 jurisdiction is void, not merely voidable, and must always be set aside on request. See Mason v.
 26 Genisco Tech Corp, 960 F.2d 849, 851 (9th Cir. 1992). Not only was the service of process
 27 defective as outlines in the TRO and Attorney Ayala declaration (Docket Entry #9 and #16-1) the
 28 proposed motion to quash service of summons and complaint and the briefing hereinabove

1 indicated Hakim lacks sufficient contact with Nevada to be sued in this judicial district. Therefore
2 regardless of the existence of a defense to the claim in this action, the default must be set aside.

3 **D. Failure to Set Aside Would Be An Appealable Injustice**

4 There is nothing novel in the concept that a trial court has the power to exercise a
5 reasonable control over all proceeding connected with the litigation before it. Such power
6 necessarily exists as one of the inherent powers of the court, and such power should be exercised
7 by the courts to insure the orderly administration of justice. Actions should be decided on the
8 merits, Coon v. Grenier 867 F2d. 73, 76 (1st Cir. 1989) – to the contrary would be an injustice
9 unto itself. The default did not result from deliberate misconduct on the part of HAKIM. The
10 facts of the default have been explained.

11 **IV. Conclusion**

12 For the reasons set forth above, the default and default judgment must be set aside and
13 vacated, and Defendant afforded the opportunity to file his proposed dispositive motion to quash
14 service of summons and complaint on a date assigned by the court.

15
16 Respectfully Submitted,

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18
19 Dated: 16 December 2014

By: /S/ BENJAMIN HAKIM
BENJAMIN HAKIM
Defendant In Propria Persona

1 **DECLARATION IN SUPPORT OF EX PARTE APPLICATION**

2 Benjamin Hakim Declares under oath and states:

3 1. My name is Benjamin Hakim I am over 18 years old. I reside at 11740 Wilshire
4 Boulevard, Los Angeles, CA 90025 in the Brentwood district of the city. I am fully competent to
5 make this declaration. The following facts are known to me based on my firsthand knowledge
6 that if called upon to testify, I could and I would competently testify to those matters contained
7 herein. I am the defendant in this action and I am a witness. I am a citizen of California and a
8 resident of California. I do not conduct business in Nevada, never have I held myself in the
9 stream of Nevada commerce.

10 2. Upon information and belief, this judgment is void as the jurisdiction of the court
11 is in question. The first time I heard of this action was upon being served an order for judgment
12 debtor's examination scheduled for 18 December 2014. I immediately begin investigating.

13 3. According to PACER, on or about 08/27/2013 Plaintiff filed the instant action
14 making various allegation of infringement and misappropriation of its intellectual property. On
15 the same date Plaintiff's filed for TRO and preliminary injunction. (See Docket Entries #1- #9)
16 Purported notice was only given by email (See Docket Entry 10). The court set the matter for
17 hearing on 09/17/2014, ("Docket Entry #9) a subsequent order permitted service by email as to
18 the Preliminary Injunction but further required compliance *in addition* to Rules 4 and 5 of the
19 Fed. R. Civ. Pro. as it related to the service of Summons and Complaint.² Default and default
20 judgment subsequently ensued. See Docket Entry # 16.

21

22 ² See Docket Entry 9, Page 4, No. 3 Lines 11-15 "In addition, to ensure Defendant receives timely
23 notice of the hearing, given that Defendant must maintain accurate contact information with the
24 domain name registrar, Plaintiffs **may, in addition to the requirements set forth in Rules 4 and**
25 **5 of the Federal Rules of Civil Procedure, serve the Motion, this Order and all other**
26 **pleadings filed to date on Defendant by electronic mail transmission.**" This appears NOT to
27 relieve opposing counsel from the ongoing Rule 4 and 5 obligation promulgated therein. See
28 Docket Entries # 8, 9, 10, 16, 16-1

1 4. Service never effectuated to me in compliance of Rules 4 and 5 of the Fed. R. Civ.
2 Pro. which requires personal or other substituted service or a motion allowing alternative service
3 that was not presented. Consequently, this court's jurisdiction over me is in question. There is no
4 proof of personal service (See Docket Entry #8 and Declaration of Plaintiff Attorney Docket
5 Entry #16-1 Declaration of Attorney Ayala page 1 and 2 para 4). Contrary to the Court's order
6 Attorney Ayala did not comply with the terms of the order that was issued by the Court on
7 08/30/2013 as adduced in the request for entry of default and default judgment in Entry #16.

8 5. I declare under penalty of perjury the foregoing is true and correct under the laws
9 of the United States.

10 Respectfully Submitted,

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13 Dated: 16 December 2014

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/S/ BENJAMIN HAKIM

By:


BENJAMIN HAKIM
Defendant In Propia Persona

[PROPOSED ORDER PREPARED BY]

BENJAMIN HAKIM

IN PROPIA PERSONA

11740 Wilshire Boulevard

Los Angeles, California 90025

Ben.Hakim@Gmail.com

UNITED STATES DISTRICT COURT

NEVADA DISTRICT

LAS VEGAS

---o0o---

HAKKASAN LV, LLC et al.

Plaintiff,

vs.

BEN HAKIM,

Defendants

) Case No.: 2:13-cv-1544-KJD-PAL

)

) [PROPOSED] ORDER MOTION TO SET

) ASIDE DEFAULT AND DEFAULT

) JUDGMENT

)

) Hearing Date:

) Time:

) Department:

) 333 South Las Vegas Boulevard, Las Vegas, NV 8

On _____ (date) Defendant BENJAMIN HAKIM

moved this Court to have the default and default judgment set aside. Therefore, good cause

appearing the motion is hereby **GRANTED**. Defendant HAKIM's proposed motion to quash

service of summons and dismiss complaint shall be filed by (date) _____ and

shall be heard on the _____ day of _____, _____ at the hour of _____

o'clock ____ .m.

IT IS SO ORDERED

By: _____

United States District Court Judge

Date/ Time: _____

8/27/2013

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 13-1544

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

1 LAURI S. THOMPSON, ESQ. (NV BAR NO. 6846)
 2 thompsonl@gtlaw.com
 3 LARAIN BURRELL, ESQ. (NV Bar No. 8771)
 4 burrelll@gtlaw.com
 5 SHAUNA L. WELSH, ESQ. (NV BAR NO. 11320)
 6 welshs@gtlaw.com
 7 GREENBERG TRAUIG, LLP
 8 3773 Howard Hughes Parkway, Suite 400N
 9 Las Vegas, Nevada 89169
 10 Telephone: (702) 792-3773
 11 Facsimile: (702) 792-9002
 12 *Counsel for Plaintiffs*

8 UNITED STATES DISTRICT COURT
 9 DISTRICT OF NEVADA

10 HAKKASAN LV, LLC, a Nevada
 11 limited liability company,
 12 HAKKASAN LIMITED, a foreign
 13 private limited company,

14 Plaintiffs,

15 v.

16 BEN HAKIM an individual,

17 Defendant.

Case No.: 2:13-cv-1544-KJD-PAL

TEMPORARY
 RESTRAINING ORDER

18 UPON CONSIDERATION of the motion filed by Plaintiffs Hakkasan LV, LLC, a Nevada
 19 limited liability company and Hakkasan Limited, a foreign private limited company (collectively
 20 "Plaintiffs"), requesting a temporary restraining order and injunction requiring Defendant Ben
 21 Hakim ("Defendant") to immediately cease and desist all use of Plaintiffs' HAKKASAN and/or
 22 similar or derivative trademarks and names including, but not limited to
 23 <hakkasannightclublasvegas.com> and on the website <www.bottlerservicereservation.com>, the
 24 supporting memorandum of points and authorities, the supporting declarations, the record in this
 25 case, and for other good cause shown:

26 THE COURT HEREBY FINDS THAT:

27 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
 28 This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §

GREENBERG TRAUIG, LLP
 3773 Howard Hughes Parkway, Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

1 1367(a);

2 2. This Court has personal jurisdiction over Defendant in that he committed tortious acts
3 that he knew or should have known would cause injury to Plaintiffs in the State of Nevada;

4 3. Plaintiffs have made extensive use of the HAKKASAN Mark in connection with
5 advertising and promoting its restaurants in the United States and around the world and to promote
6 its Las Vegas restaurant and nightclub services in the United States and around the world.

7 4. Defendant registered a domain name incorporating Plaintiffs' legal and business
8 names including <hakkasannightclublasvegas.com>;

9 5. Defendant has used the HAKKASAN Mark on his website
10 <hakkasannightclublasvegas.com> for his own commercial and financial benefit.

11 6. Defendant registered the domain name <www.bottleservicesreservation.com> which
12 references the HAKKASAN Mark.

13 7. Defendant has used the HAKKASAN Mark on his website
14 <www.bottleservicesreservation.com> for his own commercial and financial benefit.

15 8. Defendant has listed the <hakkasannightclublasvegas.com> and
16 <www.bottleservicesreservation.com> websites on his Facebook page.

17 9. Plaintiffs will suffer irreparable injury if the Court does not require Defendant to
18 cease and desist use of the Plaintiffs' name and marks and to immediately remove any and all
19 content concerning the Plaintiffs displayed on the websites connected to the domain names at issue;

20 10. Plaintiffs will suffer irreparable injury if the Court does not require Defendant to
21 cease and desist use of the Plaintiffs' name and marks on his Facebook page and any similar website
22 or account he owns and/or operates including, but not limited to, Twitter and to remove any and all
23 content which references the Plaintiffs and any and all services Plaintiffs provide at the Hakkasan
24 Las Vegas nightclub and elsewhere.

25 11. Plaintiffs have demonstrated a likelihood of success on the merits of their
26 cybersquatting claim under 15 U.S.C. § 1125(d) and their Nevada state trademark infringement
27 claim; and
28

12. There is no likelihood of harm to the public from the temporary restraining order now being granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Application for Temporary Restraining Order is hereby GRANTED.

IT IS FURTHER ORDERED that Defendant will immediately cease and desist any and all use of Plaintiffs' name and trademarks and any and all variants thereof including but not limited to HAKKASAN and <hakkasannightclublasvegas.com>.

IT IS FURTHER ORDERED that Defendant will immediately cease and desist any and all use of Plaintiffs' name and trademarks and any and all variants thereof including but not limited to HAKKASAN on his website <www.bottleservicesreservation.com>

IT IS FURTHER ORDERED that pursuant to 15 U.S.C. § 1126(d)(1)(C), the domain name <hakkasannightclublasvegas.com> shall be immediately locked by the registrar and/or its successor registrars and transferred to Plaintiff.

IT IS FURTHER ORDERED THAT Defendant will cease and desist any and all use of the Plaintiffs' name and marks on his Facebook page and any similar website or account he owns and/or operates including, but not limited to, Twitter, and remove any and all content which references the Plaintiffs and any and all services Plaintiffs provide at the Hakkasan Las Vegas nightclub and elsewhere.

IT IS FURTHER ORDERED that Defendant shall file, pursuant to 15 U.S.C. § 1116(a), with this Court and serve upon Plaintiffs within thirty (30) days after entry of this Order, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with this Court's Order; and

IT IS FURTHER ORDERED that Plaintiffs shall post a nominal bond of \$1,000 because the evidence indicates that Defendant will only suffer minimal, if any, damage by the issuance of this temporary restraining order.

ORDER SETTING HEARING FOR PRELIMINARY INJUNCTION

UPON CONSIDERATION of Plaintiffs' Motion, the Memorandum of Points and Authorities, the supporting declarations and exhibits, the papers and pleadings on file in this matter

1 and for good cause shown;

2 1. The Court hereby sets the hearing for Plaintiffs' Motion for Preliminary Injunction on
3 Sept. 17, 2013, at 9:00 a.m. in Courtroom 4A at the Lloyd D. George United States Federal
4 Courthouse, 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101.

5 2. Further, the Court hereby sets the following briefing schedule relating to Plaintiffs'
6 Motion:

7 (a) Defendant shall file and serve opposition papers, if any, no later than
8 September 12, 2013; and

9 (a) Plaintiffs shall file and serve their reply brief, if any, no later than Sept. 16,
10 2013.

11 3. In addition, to ensure Defendant receives timely notice of the hearing, given that
12 Defendant must maintain accurate contact information with the domain name registrar, Plaintiffs
13 may, in addition to the requirements set forth in Rules 4 and 5 of the Federal Rules of Civil
14 Procedure, serve the Motion, this Order and all other pleadings filed to date on Defendant by
15 electronic mail transmission.

16 DATED: 30th day of August, 2013.

17 

18 UNITED STATES DISTRICT JUDGE

19 Date/Time: August 30, 2013/12:00 P.M.

20
21 Respectfully submitted by:

22 GREENBERG TRAURIG, LLP

23 /s/ Lauri S. Thompson

24 Lauri S. Thompson (Bar No. 6846)

25 Laraine M.I. Burrell (Bar No. 8771)

26 Shauna L. Welsh (Bar No. 11320)

3773 Howard Hughes Parkway, Suite 400 North

Las Vegas, Nevada 89169

Counsel for Plaintiffs

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 Facsimile: (702) 792-9002
 8 *Counsel for Plaintiffs*

9
 10 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

11 HAKKASAN LV, LLC, a Nevada
 limited liability company,
 12 HAKKASAN LIMITED, a foreign
 private limited company,
 13

14 Plaintiffs,

15 v.

16 BEN HAKIM an individual,

17 Defendant.
 18

Case No. 2:13-cv-01544-KJD-PAL

**PLAINTIFFS' NOTICE OF SERVICE BY
 EMAIL**

19 For their complaint against Defendant, Ben Hakim ("Defendant"), Plaintiffs, Hakkasan LV,
 20 LLC, a Nevada limited liability company and Hakkasan Limited, a foreign private limited company
 21 ("Plaintiffs") complain and allege as follows:

22 **NOTICE IS HEREBY GIVEN** that on the 13th day of September, 2013, a true and accurate
 23 copy of the e-mail attached as **Exhibit 1** (which contained electronic copies of the Summons issued
 24 herein; the Complaint; Plaintiff's Application for Temporary Restraining Order and Motion for
 25 Preliminary Injunction; Issued Summons and the Temporary Restraining Order setting the hearing
 26 on the Motion for Preliminary Injunction for 9:00 a.m. on September 17, 2013) was transmitted to
 27 the e-mail address of Defendant Ben Hakim last known by Plaintiff. A copy of the registered
 28

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 3773 Howard Hughes Parkway, Suite 400 North
 Las Vegas, Nevada 89169
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

1 electronic mail receipt which reflects delivery of Exhibit 1 which attached the above-referenced
2 documents is attached hereto as Exhibit 2.

3 DATED: this 16th day of September, 2013.

4
5 **GREENBERG TRAURIG, LLP**

6 /s/ Laraine Burrell

7 Lauri S. Thompson (Bar No. 1086)

8 Laraine Burrell (Bar No. 8771)

9 Shauna Welsh (Bar No. 11320)

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11 Suite 400 North

12 Las Vegas, Nevada 89169

13 *Counsel for Plaintiffs*

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EXHIBIT 1

From: [Nev. Cynthia \(Para-LV-LT\)](#)
To: ben.hakim@gmail.com
Subject: LEGAL NOTICE (Sent Registered)
Date: Friday, September 13, 2013 6:52:16 PM
Attachments: [001 - Complaint.PDF](#)
[002 - Ex Parte Plaintiff's App for TRO.PDF](#)
[009 TRO Temporary Restraining Order.PDF](#)
[008 SUMM Summons Issued as to Ben Hakim re f11 Complaint.PDF](#)

NOTICE TO REGISTRANT

ben.hakim@gmail.com
Ben Hakim
11740 Wilshire Blvd, A2104
Los Angeles, CA 90025

Re: Hakkasan LV, LLC, et al.

v.

Ben Hakim, an individual

NOTE: Please contact me immediately if you do not receive all documents as noted below:

Issued Summons, Granted TRO, Filed Complaint, Filed Application for TRO and Motion for Preliminary Injunction

The person and/or entity referenced above has been sued in Case No. 2:13-cv-01544-KJD-PAL in the United States District Court for the District of Nevada for cybersquatting (15 U.S.C. § 1125(d)), trademark infringement (15 U.S.C. § 1114), unfair competition (15 U.S.C. § 1125(a)), common law trademark infringement, deceptive trade practices (N.R.S. § 598.0903 et seq.), fraud and intentional interference with prospective economic advantage for the registration and use of the <hakkasannightclublasvegas.com> domain name. By Court Order, the attached documents are to be served on Defendant by e-mail, based upon the contact information provided by Defendant to the domain name registrar, to provide timely notice to Defendant that Plaintiff's Motion for Preliminary Injunction will be heard by the Court on September 17, 2013 at 9:00 a.m. in Courtroom 4A of the United States District Court located at 333 Las Vegas Boulevard South, Las Vegas, Nevada, 89101. Defendants may file and serve opposition papers, if any, no later than September 12, 2013. Defendants must appear before the Court on September 17, 2013 or suffer judgment to be entered in favor of Plaintiff

EXHIBIT 2

From: Receipt
To: New Cynthia (Para-LV-LT)
Subject: Receipt:LEGAL NOTICE
Date: Friday, September 13, 2013 8:56:09 PM
Attachments: DeliveryReceipt.xml
 HtmlReceipt.htm



This receipt contains verifiable proof of your RPost transaction.

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To authenticate this receipt, forward this email with its attachment to 'verify@rpost.net'

Delivery Status					
Address	Status	Details	Delivered (UTC*)	Delivered (local)	Opened (local)
ben.hakim@gmail.com	Delivered to Mailserver	250 2.0.0 OK 1379123599 sl4si13253560pac.184 - gsmtpln gmail-smtp-in.l.google.com (74.125.25.26)	9/14/2013 1:53:19 AM (UTC)	9/14/2013 1:53:19 AM (GMT)	

*UTC represents Coordinated Universal Time.

Message Envelope	
From:	neyc@gtlaw.com<neyc@gtlaw.com>
Subject:	LEGAL NOTICE
To:	<ben.hakim@gmail.com>
Cc:	
Bcc:	
Network ID:	<3C1DEB0E32EC3D4D92E8A8028076C3B1B6A896@GT2-EXMBX05.gtlaw.co
Received:	9/14/2013 1:53:14 AM(UTC) 0
Client Code:	

Message Statistics	
Message ID:	86908AEAF793C0FCF67479A5E86F8CCD6902632C
Message Size:	7441622
Additional Notes:	None
File Name:	File Size (bytes)
001 - Complaint.PDF	2009920
002 - Ex Parte Plaintiff_s App for TRO.PDF	2160346
009 TRO Temporary Restraining Order.PDF	184569
008 SUMM Summons Issued as to Ben Hakim re [1] Complaint.PDF	1050896

Delivery Audit Trail	
2013-09-13 18:53:15 starting gmail.com/mta1\n 2013-09-13 18:53:15 connecting from mta1.la1.rpost.net (64.70.1.107) to gmail-smtp-in.l.google.com (74.125.25.26)\n 2013-09-13 18:53:15 connected from 64.70.1.107:60072\n 2013-09-13 18:53:15 >>> 220 mx.google.com ESMTP sl4si13253560pac.184 - gsmtpln 2013-09-13 18:53:15 <<< EHLO mta1.la1.rpost.net\n 2013-09-13 18:53:16 >>> 250-mx.google.com at your service, [64.70.1.107]\n 2013-09-13 18:53:16 >>> 250-SIZE 35882577\n 2013-09-13 18:53:16 >>> 250-8BITMIME\n 2013-09-13 18:53:16 >>> 250-STARTTLS\n 2013-09-13 18:53:16 >>> 250-ENHANCEDSTATUSCODES\n 2013-09-13 18:53:16 >>> 250-PIPELINING\n 2013-09-13 18:53:16 >>> 250 CHUNKING\n 2013-09-13 18:53:16 <<< MAIL FROM:<rcp86908AEAF793C0FCF67479A5E86F8CCD6902632C-1@rpost.net> BODY=7BIT\n 2013-09-13 18:53:16 <<< RCPT TO:<ben.hakim@gmail.com>\n 2013-09-13 18:53:16 <<< DATA\n 2013-09-13 18:53:16 >>> 250 2.1.0 OK sl4si13253560pac.184 - gsmtpln 2013-09-13 18:53:16 >>> 250 2.1.5 OK sl4si13253560pac.184 - gsmtpln 2013-09-13 18:53:16 >>> 354 Go ahead sl4si13253560pac.184 - gsmtpln 2013-09-13 18:53:17 <<< .\n 2013-09-13 18:53:19 >>> 250 2.0.0 OK 1379123599 sl4si13253560pac.184 - gsmtpln 2013-09-13 18:53:19 <<< QUIT\n 2013-09-13 18:53:19 >>> 221 2.0.0 closing connection sl4si13253560pac.184 - gsmtpln 2013-09-13 18:53:19 closed gmail-smtp-in.l.google.com (74.125.25.26) in=449 out=7443978\n 2013-09-13 18:53:19 done gmail.com/mta1	

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Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HAKKASAN LV, LLC, a Nevada
limited liability company,
HAKKASAN LIMITED, a foreign
private limited company,

Plaintiffs,

v.

BEN HAKIM an individual,

Defendant.

Case No. 2:13-cv-01544-KJD-PAL

**DECLARATION OF NANCY R. AYALA IN
SUPPORT OF PLAINTIFFS' REQUEST
FOR ENTRY OF DEFAULT AS TO BEN
HAKIM**

1. I am an attorney with the law firm of Greenberg Traurig, LLP, counsel for plaintiffs Hakkasan LV, LLC and Hakkasan Limited in this case, and I have personal knowledge of the facts set forth in this declaration.

2. This declaration is made pursuant to Fed. R. Civ. P. 55(a) for the purpose of enabling plaintiffs to obtain an entry of default against defendant BEN HAKIM ("Hakim") for Mr. Hakim's failure to answer or otherwise plead to plaintiffs' complaint.

3. Plaintiffs filed their complaint on August 27, 2013.

4. On September 16, 2013, plaintiffs' counsel caused defendant Hakim to be served with the complaint and summons by electronic mail [see doc. no. 10] in accordance

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1 with the Court's Temporary Restraining Order issued on August 30, 2013. See Doc. No. 9,
2 Order, ¶ 3. Mr. Hakim's answer was due on October 4, 2013.

3 5. Defendant Ben Hakim has failed to serve an answer or other responsive
4 pleading as required by Fed. R. Civ. P. 12.

5 DATED this 31st day of March, 2014.

6
7 **GREENBERG TRAURIG, LLP**

8 /s/ Nancy R. Ayala

9 Nancy R. Ayala (NV Bar No. 7146)
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5 Nevada Bar No. 7146
6 ayalan@gtlaw.com
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10 SHAUNA L. WELSH, ESQ.
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15 Suite 400 North
16 Las Vegas, Nevada 89169
17 Telephone: (702) 792-3773
18 Facsimile: (702) 792-9002
19 Counsel for Plaintiffs

20
21 UNITED STATES DISTRICT COURT
22 DISTRICT OF NEVADA

23 HAKKASAN LV, LLC, a Nevada
24 limited liability company,
25 HAKKASAN LIMITED, a foreign
26 private limited company,

27 Plaintiffs,

28 v.

BEN HAKIM an individual,

Defendant.

Case No. 2:13-cv-01544-KJD-PAL

REQUEST FOR ENTRY OF DEFAULT AS
TO DEFENDANT BEN HAKIM

Plaintiffs, HAKKASAN LV, LLC and HAKKASAN LIMITED, hereby respectfully
request the Clerk of the Court to enter default under Fed. R. Civ. P. 56(a) as to defendant

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1 BEN HAKIM for its failure to plead, answer or otherwise defend, as supported by the
2 Declaration of Nancy R. Ayala filed herewith.

3 DATED this 31st day of March, 2014.

4
5 GREENBERG TRAURIG, LLP

6 /s/ Nancy R. Ayala

7 Nancy R. Ayala (NV Bar No. 7146)
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